

House Engrossed Senate Bill

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

CHAPTER 75

SENATE BILL 1553

AN ACT

AMENDING SECTION 15-1182, ARIZONA REVISED STATUTES; AMENDING TITLE 15, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 19; RELATING TO ARIZONA EMPOWERMENT SCHOLARSHIP ACCOUNTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 15-1182, Arizona Revised Statutes, is amended to
3 read:

4 15-1182. Special education fund; administration

5 A. There is established a special education fund which shall consist
6 of legislative appropriations made to the fund for purposes of this section
7 and section 15-1202 AND CHAPTER 19, ARTICLE 1 OF THIS TITLE.

8 B. The fund shall be administered by the superintendent of public
9 instruction for the purposes provided in this article and article 7 of this
10 chapter AND CHAPTER 19, ARTICLE I OF THIS TITLE.

11 C. Each fiscal year the state board of education shall include in its
12 budget request for assistance to schools a separate line item for the fund.

13 D. The fund shall provide monies for the education of a child who has
14 been placed in a residential facility by a state placing agency or who
15 requires a residential special education placement as defined in section
16 15-761 OR FOR DEPOSIT INTO AN ARIZONA EMPOWERMENT SCHOLARSHIP ACCOUNT
17 PURSUANT TO SECTION 15-2402.

18 E. If a child has been placed in a residential facility by a state
19 placing agency, the fund shall provide monies for the following types of
20 vouchers:

21 1. Initial residential education vouchers to fund the educational
22 costs for any child, whether or not eligible for special education. This
23 paragraph applies to a child who has been placed in a residential facility
24 and who has either not received a comprehensive education evaluation as
25 provided in section 15-766, who has previously received such an evaluation
26 and was determined to be ineligible for special education services or who is
27 eligible for special education and for whom necessary procedures for changing
28 the child's educational placement must be completed. This voucher expires on
29 the expiration of sixty calendar days or completion of the educational
30 evaluation or review of special education placement, whichever occurs first.

31 2. Continuing residential education vouchers that fund the educational
32 costs for any child, whether or not eligible for special education, who
33 requires placement in a residential facility after the expiration of the
34 initial education voucher and who is not eligible for a residential special
35 education voucher.

36 F. When a school district makes a residential special education
37 placement, the fund shall provide monies to fund the residential special
38 education placement.

39 G. Monies in the fund are exempt from the provisions of section 35-190
40 relating to lapsing of appropriations. Any monies left unexpended may be
41 distributed to school districts by the department of education for the
42 following purposes:

43 1. To provide educational counseling, training and support services to
44 a child with a disability in order to maintain the child's educational
45 placement in the least restrictive environment.

2. To provide educational transition assistance to children who return to their home after placement in a residential facility.

3. To train personnel for and develop and implement model programs for use by school districts to serve children with emotional disabilities.

H. The total amount of state monies that may be spent in any fiscal year by the superintendent of public instruction for the purposes of this article AND CHAPTER 19, ARTICLE 1 OF THIS TITLE shall not exceed the amount appropriated or authorized by section 35-173 for that purpose. This article shall not be construed to impose a duty on an officer, agent or employee of this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

Sec. 2. Title 15, Arizona Revised Statutes, is amended by adding chapter 19, to read:

CHAPTER 19

ARIZONA EMPOWERMENT SCHOLARSHIP ACCOUNTS

ARTICLE 1. GENERAL PROVISIONS

15-2401. Definitions

IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "DEPARTMENT" MEANS THE DEPARTMENT OF EDUCATION.

2. "ELIGIBLE POSTSECONDARY INSTITUTION" MEANS A COMMUNITY COLLEGE AS DEFINED IN SECTION 15-1401, A UNIVERSITY UNDER THE JURISDICTION OF THE ARIZONA BOARD OF REGENTS OR AN ACCREDITED PRIVATE POSTSECONDARY INSTITUTION.

3. "PARENT" MEANS A RESIDENT OF THIS STATE WHO IS THE PARENT OR LEGAL GUARDIAN OF A QUALIFIED STUDENT.

4. "QUALIFIED SCHOOL" MEANS A NONGOVERNMENTAL PRIMARY OR SECONDARY SCHOOL OR A PRESCHOOL FOR HANDICAPPED STUDENTS THAT IS LOCATED IN THIS STATE AND THAT DOES NOT DISCRIMINATE ON THE BASIS OF RACE, COLOR OR NATIONAL ORIGIN.

5. "QUALIFIED STUDENT" MEANS A RESIDENT OF THIS STATE WHO IS EITHER IDENTIFIED AS HAVING A DISABILITY UNDER SECTION 504 OF THE REHABILITATION ACT (29 UNITED STATES CODE SECTION 794), IDENTIFIED BY A SCHOOL DISTRICT AS A CHILD WITH A DISABILITY AS DEFINED IN SECTION 15-761 OR A CHILD WITH A DISABILITY WHO IS ELIGIBLE TO RECEIVE SERVICES FROM A SCHOOL DISTRICT UNDER SECTION 15-763 AND WHO DID ANY OF THE FOLLOWING:

(a) ATTENDED A GOVERNMENTAL PRIMARY OR SECONDARY SCHOOL AS A FULL-TIME STUDENT AS DEFINED IN SECTION 15-901 FOR AT LEAST THE FIRST ONE HUNDRED DAYS OF THE PRIOR FISCAL YEAR AND WHO TRANSFERRED FROM A GOVERNMENTAL PRIMARY OR SECONDARY SCHOOL TO A QUALIFIED SCHOOL.

(b) PARTICIPATED IN THE EMPOWERMENT SCHOLARSHIP ACCOUNT PROGRAM IN THE PREVIOUS YEAR AND WHOSE PARENT RENEWS THE AGREEMENT PURSUANT TO SECTION 15-2402, SUBSECTION B.

(c) RECEIVED A SCHOLARSHIP UNDER SECTION 43-1505 AND WHO CONTINUES TO ATTEND A QUALIFIED SCHOOL.

1 6. "TREASURER" MEANS THE OFFICE OF THE STATE TREASURER.
2 15-2402. Arizona empowerment scholarship accounts
3 A. ARIZONA EMPOWERMENT SCHOLARSHIP ACCOUNTS ARE ESTABLISHED TO PROVIDE
4 OPTIONS FOR THE EDUCATION OF STUDENTS IN THIS STATE.
5 B. TO ENROLL A QUALIFIED STUDENT FOR AN EMPOWERMENT SCHOLARSHIP
6 ACCOUNT, THE PARENT OF THE QUALIFIED STUDENT MUST SIGN AN AGREEMENT TO DO ALL
7 OF THE FOLLOWING:
8 1. PROVIDE AN EDUCATION FOR THE QUALIFIED STUDENT IN AT LEAST THE
9 SUBJECTS OF READING, GRAMMAR, MATHEMATICS, SOCIAL STUDIES AND SCIENCE.
10 2. NOT ENROLL THE QUALIFIED STUDENT IN A SCHOOL DISTRICT OR CHARTER
11 SCHOOL AND RELEASE THE SCHOOL DISTRICT FROM ALL OBLIGATIONS TO EDUCATE THE
12 QUALIFIED STUDENT.
13 3. NOT ACCEPT A SCHOLARSHIP FROM A SCHOOL TUITION ORGANIZATION
14 PURSUANT TO TITLE 43 FOR THE QUALIFIED STUDENT IN THE SAME YEAR A PARENT
15 SIGNS THE AGREEMENT PURSUANT TO SUBSECTION B OF THIS SECTION.
16 4. USE THE MONEY DEPOSITED IN THE QUALIFIED STUDENT'S ARIZONA
17 EMPOWERMENT SCHOLARSHIP ACCOUNT ONLY FOR THE FOLLOWING EXPENSES OF THE
18 QUALIFIED STUDENT:
19 (a) TUITION OR FEES AT A QUALIFIED SCHOOL.
20 (b) TEXTBOOKS REQUIRED BY A QUALIFIED SCHOOL.
21 (c) EDUCATIONAL THERAPIES OR SERVICES FOR THE QUALIFIED STUDENT FROM A
22 LICENSED OR ACCREDITED PRACTITIONER OR PROVIDER.
23 (d) TUTORING SERVICES PROVIDED BY A TUTOR ACCREDITED BY A STATE,
24 REGIONAL OR NATIONAL ACCREDITING ORGANIZATION.
25 (e) CURRICULUM.
26 (f) TUITION OR FEES FOR A NONPUBLIC ONLINE LEARNING PROGRAM.
27 (g) FEES FOR A NATIONALLY STANDARDIZED NORM-REFERENCED ACHIEVEMENT
28 TEST, ADVANCED PLACEMENT EXAMINATIONS OR ANY EXAMS RELATED TO COLLEGE OR
29 UNIVERSITY ADMISSION.
30 (h) CONTRIBUTIONS TO A QUALIFIED TUITION PROGRAM ESTABLISHED PURSUANT
31 TO 11 UNITED STATES CODE SECTION 529.
32 (i) TUITION OR FEES AT AN ELIGIBLE POSTSECONDARY INSTITUTION.
33 (j) TEXTBOOKS REQUIRED BY AN ELIGIBLE POSTSECONDARY INSTITUTION.
34 (k) FEES FOR MANAGEMENT OF THE EMPOWERMENT SCHOLARSHIP ACCOUNT BY
35 FIRMS SELECTED BY THE DEPARTMENT.
36 C. IN EXCHANGE FOR THE PARENT'S AGREEMENT PURSUANT TO SUBSECTION B OF
37 THIS SECTION, THE DEPARTMENT SHALL TRANSFER FROM THE SPECIAL EDUCATION FUND
38 PURSUANT TO SECTION 15-1182 TO THE TREASURER FOR DEPOSIT INTO AN ARIZONA
39 EMPOWERMENT SCHOLARSHIP ACCOUNT AN AMOUNT THAT IS EQUIVALENT TO NINETY PER
40 CENT OF THE BASE SUPPORT LEVEL PRESCRIBED IN SECTION 15-943 FOR THAT
41 PARTICULAR STUDENT.
42 D. A PARENT MUST RENEW THE QUALIFIED STUDENT'S EMPOWERMENT SCHOLARSHIP
43 ACCOUNT ON AN ANNUAL BASIS.
44 E. A SIGNED AGREEMENT UNDER THIS SECTION CONSTITUTES SCHOOL ATTENDANCE
45 REQUIRED BY SECTION 15-802.

1 F. A QUALIFIED SCHOOL OR A PROVIDER OF SERVICES PURCHASED PURSUANT TO
2 SUBSECTION B, PARAGRAPH 4 OF THIS SECTION MAY NOT SHARE, REFUND OR REBATE ANY
3 ARIZONA EMPOWERMENT SCHOLARSHIP ACCOUNT MONIES WITH THE PARENT OR QUALIFIED
4 CHILD IN ANY MANNER.

5 G. ON THE QUALIFIED STUDENT'S GRADUATION FROM A POSTSECONDARY
6 INSTITUTION OR AFTER ANY PERIOD OF FOUR CONSECUTIVE YEARS AFTER HIGH SCHOOL
7 GRADUATION IN WHICH THE STUDENT IS NOT ENROLLED IN AN ELIGIBLE POSTSECONDARY
8 INSTITUTION, THE QUALIFIED STUDENT'S ARIZONA EMPOWERMENT SCHOLARSHIP ACCOUNT
9 SHALL BE CLOSED AND ANY REMAINING FUNDS SHALL BE RETURNED TO THE STATE.

10 H. MONIES RECEIVED PURSUANT TO THIS ARTICLE DOES NOT CONSTITUTE
11 TAXABLE INCOME TO THE PARENT OF THE QUALIFYING STUDENT.

12 15-2403. Empowerment scholarship accounts; administration;
13 audit; rules

14 A. THE TREASURER MAY CONTRACT WITH PRIVATE FINANCIAL MANAGEMENT FIRMS
15 TO MANAGE ARIZONA EMPOWERMENT SCHOLARSHIP ACCOUNTS WITH THE SUPERVISION OF
16 THE TREASURER.

17 B. THE DEPARTMENT SHALL CONDUCT OR CONTRACT FOR ANNUAL AUDITS OF A
18 RANDOM SAMPLE OF EMPOWERMENT SCHOLARSHIP ACCOUNTS TO ENSURE COMPLIANCE WITH
19 SECTION 15-2402, SUBSECTION B, PARAGRAPH 4. THE DEPARTMENT MAY ALSO CONDUCT
20 OR CONTRACT FOR AUDITS OF EMPOWERMENT SCHOLARSHIP ACCOUNTS AS NEEDED TO
21 ENSURE COMPLIANCE WITH SECTION 15-2402, SUBSECTION B, PARAGRAPH 4.

22 C. THE DEPARTMENT MAY REMOVE ANY PARENT OR QUALIFIED STUDENT FROM
23 ELIGIBILITY FOR AN ARIZONA EMPOWERMENT SCHOLARSHIP ACCOUNT AND SHALL NOTIFY
24 THE TREASURER. A PARENT MAY APPEAL THE DEPARTMENT'S DECISION PURSUANT TO
25 TITLE 41, CHAPTER 6, ARTICLE 10.

26 D. THE DEPARTMENT MAY REFER CASES OF SUBSTANTIAL MISUSE OF MONIES TO
27 THE ATTORNEY GENERAL FOR INVESTIGATION IF THE DEPARTMENT OBTAINS EVIDENCE OF
28 FRAUDULENT USE OF AN ACCOUNT.

29 E. THE TREASURER MAY DEDUCT UP TO THREE PER CENT OF THE AMOUNT OF
30 STUDENT STATE AID FROM EACH EMPOWERMENT SCHOLARSHIP ACCOUNT FOR THE COSTS OF
31 ADMINISTERING EMPOWERMENT SCHOLARSHIP ACCOUNTS UNDER THIS CHAPTER, INCLUDING
32 COSTS INCURRED BY THE DEPARTMENT.

33 F. THE DEPARTMENT SHALL MAKE QUARTERLY TRANSFERS OF THE AMOUNT
34 CALCULATED PURSUANT TO SECTION 15-2402, SUBSECTION C TO THE TREASURER FOR
35 DEPOSIT INTO THE EMPOWERMENT SCHOLARSHIP ACCOUNT OF EACH QUALIFIED STUDENT.

36 G. THE DEPARTMENT MAY ADOPT RULES NECESSARY FOR THE ADMINISTRATION OF
37 EMPOWERMENT SCHOLARSHIP ACCOUNTS.

38 15-2404. State control over nonpublic schools; prohibition;
39 application

40 A. THIS CHAPTER DOES NOT PERMIT ANY GOVERNMENT AGENCY TO EXERCISE
41 CONTROL OR SUPERVISION OVER ANY NONPUBLIC SCHOOL OR HOME SCHOOL.

42 B. A QUALIFIED SCHOOL THAT ACCEPTS A PAYMENT FROM A PARENT PURSUANT TO
43 THIS CHAPTER IS NOT AN AGENT OF THE STATE OR FEDERAL GOVERNMENT.

1 C. A QUALIFIED SCHOOL SHALL NOT BE REQUIRED TO ALTER ITS CREED,
2 PRACTICES, ADMISSIONS POLICY OR CURRICULUM IN ORDER TO ACCEPT STUDENTS WHOSE
3 PARENTS PAY TUITION OR FEES FROM AN EMPOWERMENT SCHOLARSHIP ACCOUNT PURSUANT
4 TO THIS CHAPTER IN ORDER TO PARTICIPATE AS A QUALIFIED SCHOOL.

5 D. IN ANY LEGAL PROCEEDING CHALLENGING THE APPLICATION OF THIS CHAPTER
6 TO A QUALIFIED SCHOOL, THE STATE BEARS THE BURDEN OF ESTABLISHING THAT THE
7 LAW IS NECESSARY AND DOES NOT IMPOSE ANY UNDUE BURDEN ON QUALIFIED SCHOOLS.

8 Sec. 3. Arizona empowerment scholarship accounts; agreements

9 For the 2011 fall semester, the deadline for parents to sign an
10 agreement with the department is August 1, 2011. For the 2012 spring
11 semester, the deadline is December 1, 2011. The department has up to thirty
12 days to process agreements and notify the treasurer of the total number of
13 qualified students who have properly filled out the agreements for
14 empowerment scholarship accounts.

APPROVED BY THE GOVERNOR APRIL 12, 2011.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 12, 2011.

Passed the House April 5, 20 11,

Passed the Senate March 9, 20 11,

by the following vote: 40 Ayes,

by the following vote: 20 Ayes,

19 Nays, 1 Not Voting

8 Nays, 2 Not Voting

[Signature]
Speaker of the House

[Signature]
President of the Senate

Cheryl Laube
Chief Clerk of the House

Charmine Bellinger
Secretary of the Senate

~~EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR~~

~~This Bill was received by the Governor this~~

~~_____ day of _____, 20____,~~

~~at _____ o'clock _____ M.~~

~~_____
Secretary to the Governor~~

~~Approved this _____ day of~~

~~_____, 20____,~~

~~at _____ o'clock _____ M.~~

~~_____
Governor of Arizona~~

S.B. 1553

~~EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE~~

~~This Bill was received by the Secretary of State~~

~~this _____ day of _____, 20____,~~

~~at _____ o'clock _____ M.~~

~~_____
Secretary of State~~

SENATE CONCURS IN HOUSE
AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 7, 20 11

by the following vote: 21 Ayes,

7 Nays, 2 Not Voting

[Signature]
President of the Senate

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

7 day of April, 20 11

at 4:45 o'clock P. M.

[Signature]
Secretary to the Governor

Approved this 12th day of

April

at 3:40 o'clock P. M.

[Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 12th day of April, 20 11

S.B. 1553

at 4:33 o'clock P. M.

[Signature]
Secretary of State